IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 601 OF 2006

Associated Stone Industries Ltd. ... Petitioner.

V/s.

Hindustan Organic Chemicals Ltd. ... Respondents.

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Mr. K.R. Shetty for the Petitioner.
Mr. Sandeep Parekh i/b. Crawford Baley & Co. for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

12th April 2007.

P.C. :

. Since a settlement between the parties is not possible, the Petition has by consent been heard and has been taken up on Board.

2. The Company Petition was instituted on 25th August 2006 for winding up under Sections 433 and 434 of the Companies Act, 1956. In the affidavit in reply it has been stated that much prior to the institution of the Petition, the First Respondent had filed a reference under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 before the B.I.F.R. On 6th January 2005. The

reference was received on 28th January 2005. By a letter dated 11th February 2005, the B.I.F.R. intimated to the First Respondent that the reference has been registered as Case 501 of 2005. By an order dated 25th November 2005, the B.I.F.R. declared that the net worth of the Company had been entirely eroded and the Company was a Sick Industrial Company as on 31st March 2004 in terms of Section 3(1)(o) of the Act. The State Bank of India was appointed as an Operating Agency under Section 17 to prepare a revival scheme. In the subsequent affidavit dated 12th April 2007, it has been stated by the Respondent that the Operating Agency submitted a rehabilitation scheme, adopting a financial restructuring package as approved by the Government of India in March 2006. It appears that the Company had approached the Government of India, which was considered by the Board for Reconstruction of Public Sector Enterprises (BRPSE) which cleared the proposal in October 2005. The Cabinet Committee on Economic Affairs (CCEA) approved the proposal in a meeting held on 9th March 2006. In September 2006, the Government of India released funds in accordance with the

recommendations contained in the scheme approved by Board for Reconstruction of Public Sector Enterprises (BRPSE) and the Cabinet Committee on Economic Affairs (CCEA). The recommendations interalia include a settlement of dues of Bond/FD Holders by making payment of their principal and interest at the coupon rate till the date of maturity.

3. On 25th May 2005, the Respondent addressed a communication to the Petitioner seeking acceptance of the scheme as proposed. It appears that on 24th March 2007, the Petitioner furnished a counter offer to the Respondent. The Respondent is justified in asserting that the counter offer suggested by the Petitioner cannot be considered since it would deviate from payment envisaged of outstandings and overdues to bond holders in implementation of the scheme sanctioned by the BRPSE and recommended by the Operating Agency. During the pendency of the BIFR proceeding, it would not be open to the Respondent to accept any counter offer or to deviate from the current scheme for repayment of dues.

4. At the hearing of the Company Petition, the principal submission on behalf of the Company is that the Petition for winding up is not maintainable having regard to the provisions of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Section 22 inter alia provides that during the period when an enquiry is pending under Section 16 pr a scheme under Section 17 is under preparation or consideration in respect of an industrial company, no proceedings for the winding up of the industrial company **shall lie or be proceeded with** without the consent of the BIFR or, as the case may be the AAIFR. As the facts narrated in the earlier part of the judgment would show, on the date on which the Petition was instituted, a reference as a matter of fact was pending before the BIFR and an enquiry under Section 16 was already in progress. A Company Petition therefore was not maintainable. Even in the affidavit dated 12th April 2007, the Company has made an offer to the Petitioner that it is ready and willing to pay the principal amount of the bonds viz. Rs. 14 lakhs in full and final

settlement, since interest upto the date of maturity has already been paid. Counsel appearing on behalf of the Petitioner states that the Petitioner should be permitted to accept the principal amount and to litigate before the BIFR on the payment of interest. The offer made by the Company, in terms of the scheme as approved by the BRPSE, CCEA and the Operating Agency is a composite offer. No such direction can be given by the Court the effect of which would be to deviate from the scheme which is under implementation. In any event that would lie outside the jurisdiction of the Company Court particularly having regard to the fact that the Petition is not maintainable under Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

5 The Petition is accordingly dismissed, leaving it open to the Petitioner to take recourse to the remedies which are available to the Petitioner in accordance with the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.